REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this amendment, claims 1, 3, 7-9, 12, 13, 15-21, 39-50 will be pending in the present application. Claims 2 and 4 have been cancelled.

The notice of allowance regarding claims 21, 39, and 40 is appreciated. New claims 41-46 were added which depend from allowed claims 39 and 40. As these claims merely add further limitations to the already allowed independent claims, applicant requests review and allowance of these dependent claims. Claim 47 is drafted in independent form and similar in scope to allowable claim 39 except that claim 47 does not include the final wherein clause recited in claim 39. Applicant requests review and allowance of this independent claim and the associated dependent claims 48-50.

Applicant has made several other amendments in an effort to clarify the invention being claimed. All amendments not specifically described below with respect to a specific rejection made by the Examiner have been performed to add clarity and are not entered to overcome a rejection or for the purposes of patentability. In addition, no new matter has been entered by these amendments.

Claims 13, and 14-18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner rejected claim 13 for reciting the limitation "the medication chamber" for lacking antecedent basis.

In response to this rejection, applicant has amended claim 13 to delete this limitation and insert the limitation "the delivery portion." Antecedent basis for this limitation can be found in line 2 of claim 13. Accordingly, applicant requests reconsideration and allowance of independent claim 13 and dependent claims 15-18. In addition, claim 14 was previously cancelled by the applicant in the response dated September 23, 2003. The applicant requests removal of the rejection to claim 14.

Claim 19 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,505,195 to Wolf et al. ("the '195 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

The dry dose powder inhalant device disclosed in the '195 patent is mounted on a dry powder dispenser having a mouthpiece to deliver dry powder medication to a patient. The device includes a housing that is mounted on the dispenser to hold electronics. The electronics comprise proximity reed switches to record when the device has been set and loaded to deliver a dose of medication. The electronics also include a fast response thermistor for measuring when a sufficient air flow is being drawn into the housing.

This rejection is perplexing. In the Office Action dated September 13, 2002, the Examiner rejected claim 19 as being anticipated by the '195 patent. Then pending claim 19 was very similar to the current claim 19 and recited the following:

> 19. An electronic data carrier for use with a drug delivery apparatus comprising a memory for holding treatment information concerning the use of the drug delivery apparatus in delivering a specified drug, and an output for transmitting information to the drug delivery apparatus.

In the response dated February 13, 2003, the applicant amended claim 19 to recite that the memory is "located within the electronic data carrier." In the remarks section, the applicant noted that the "memory" in the '195 patent is either part of the drug delivery apparatus or it is not. In either event, there is no output for transmitting information to the drug delivery apparatus. The device disclosed in the '195 patent is nothing more that a dose counter. It merely tracks when the device is coupled to the dry powder inhalant dispenser, when the dispenser has been loaded, and when airflow is detected. It does not disclose an output for transmitting information to the drug delivery device. In the following Office Action, the Examiner applied a new 35 U.S.C. § 103 rejection under Hess in view of Poley, which was subsequently overcome by the applicant. Inferably, the Examiner had correctly concluded that claim 19 overcomes the '195 reference. The currently pending claim 19 reads as follows:

> 19. An electronic data carrier for use with a drug delivery device removable from a drug delivery device, the electronic data carrier comprising:

a memory located within the electronic data carrier for holding treatment information concerning the use of the drug delivery device in delivering a specified drug, and

an output for transmitting treatment information to the drug delivery device.

None of the limitations relied upon by the applicant in the February 13, 2005 response have been deleted. Thus, it is unclear to the applicant why the Examiner has resurrected this rejection with respect to the '195 reference. The current claim 19 has the same limitations as the earlier claim 19 that were relied upon by the applicant to overcome this rejection the first time. Accordingly, the applicant respectfully requests reconsideration and allowance of claim 19.

Claim 20 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,237,987 to Anderson et al. ("the '987 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

The '987 patent discloses a patient ventilator system providing a controllable flow and volume of mixed inhalation gas to a patient. The ventilator also includes a nebulizer 48. The Examiner highlighted claim 5 which recites that the controller utilizes program instructions stored on removable memory devices. As clarified at Column 12, Lines 58-68, the '987 device contemplates the use of EPROM's (Erasable Programmable Read Only Memories). The use of such devices do not provide the functionality, or the benefits, provided by the present invention. These devises are read only memories. Indeed, they can be removed and reprogrammed as described at Column 13, Lines 1-3. However, they are completely incapable of being written to by a drug delivery device. To clarify this distinction, claim 20 has been amended to recite that the electronic data carrier includes a read/write memory for storing drug treatment information for use by the drug delivery device. Applicant requests reconsideration and allowance of claim 20.

Claims 1-4, 7, 8, and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,505,195 to Wolf ("the '195 patent") in view of the Examiner's notice that it would be obvious to have a plurality of containers. Applicant respectfully traverses this rejection for the reasons presented below.

The dry dose powder inhalant device disclosed in the '195 patent is mounted on a dry powder dispenser having a mouthpiece to deliver dry powder medication to a patient. The device includes a housing that is mounted on the dispenser to hold electronics. The electronics comprise proximity reed switches to record when the device has been set and loaded to deliver a dose of medication. The electronics also include a fast response thermistor for measuring when a sufficient air flow is being drawn into the housing.

In claim 1, the electronic data carrier has a read/write memory for storing drug treatment information for use by the drug delivery device. The Examiner has taken notice that it would be obvious to one of ordinary skill in the art at the time the invention was made to have a plurality of containers. However, this does not supplement the deficiencies of the '195 patent. The device disclosed in the '195 patent does not store information for use by the drug delivery device. As noted above, the device disclosed in the '195 patent is nothing more that a dose counter. It merely tracks when the device is coupled to the dry powder inhalant dispenser, when the dispenser has been loaded, and when airflow is detected. It does not store information for use by the drug delivery device. Once again, claim 1 was rejected by the Examiner in the September 13, 2002 Office Action. And, once again, these rejections were overcome by the applicant's amendment and response filed on February 13, 2003. In that response, the applicant noted that "claim 1 makes it clear that the data carrier includes drug treatment information for use by a drug delivery apparatus, whereas Wolf, et al. only discloses the recording of treatments." Accordingly, applicant requests reconsideration and allowance of independent claim 1 and dependent claims 2, 3, 7, 8, and 12. Claim 4 has been cancelled. The applicant requests removal of the rejection to claim 4.

This response is being filed within one month after the three-month statutory response period which expired on August 3, 2005. In addition, one additional independent claim has been added in excess of the highest number of independent claims previously paid for. The Commission is authorized to charge these fees as well as any other fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

By _____

Timothy Nathan
Reg. No.: 44,256
Tel. No.: (724) 387-4435
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525